

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**JAROSLAW G. TYMURA,

Respondent.**

**Docket No. FMCSA-2010-0048¹
(Eastern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On December 2, 2009, Claimant, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Jaroslaw G. Tymura, proposing a civil penalty of \$490 for one alleged violation of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which stated that it was based upon a November 9, 2009 compliance review conducted at Motyka Trucking, LLC in Bath, Pennsylvania, charged Respondent with one violation of 49 CFR 383.51(a), for “[o]perating a commercial motor vehicle with a commercial driver’s license that is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.”² According to the Statement of Charges section of the Notice of Claim, Respondent had been disqualified to operate by the State of Connecticut on April 9, 2009. The violation allegedly occurred on August 12, 2009, six days before Respondent’s commercial driver’s license was reinstated.³

¹ The prior case number of this matter was PA-2010-0029-US0063.

² See Exhibit A to Field Administrator’s Consent to Respondent’s Request for Formal Hearing.

³ The Statement of Charges section of the Notice of Claim was supplied by Respondent.

On December 21, 2009, Respondent replied to the Notice of Claim, denying the allegation and requesting a formal hearing. Respondent contended that he was not aware that his license had been temporarily suspended because the police had not informed him of it. In fact, he averred that on August 12, 2009, the date of the alleged violation, the police officer told him that his license would be suspended on September 4, 2009.⁴ On February 16, 2010, Claimant consented to Respondent's request for a formal hearing, indicating that a hearing may be necessary to resolve the matters in dispute. Accordingly, this matter is being forwarded to the U.S. Department of Transportation's Office of Hearings.

2. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The judge should also make a determination as to why Claimant did not charge the motor carrier with the violation in accordance with 49 CFR 383.37(a). FMCSA policy states that "[e]nforcement action will be primarily directed against motor carriers, even for driver violations, because the FMCSRs hold motor carriers accountable for the actions of their drivers (49 CFR 390.11). Enforcement should only be taken against a driver when it can be conclusively demonstrated that the motor carrier could not have known of the violation. Enforcement action should be taken

⁴ See Exhibit B to Field Administrator's Consent to Respondent's Request for Formal Hearing.

against drivers that consistently and knowingly ignore these regulations.⁵ The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the revised Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

3.17.10
Date

⁵ FMCSA's Field Operations Training Manual (FOTM), Volume III, Enforcement, Effective August 1, 2002, section 4.2, General Guidance. *See In the Matter of Peter Pan Bus Lines, Inc.*, Docket No. FMCSA-2003-14655, Final Order, August 5, 2006, at 14.

CERTIFICATE OF SERVICE

This is to certify that on this 18 day of March, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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44 Mill Street
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The Honorable Ronnie A. Yoder
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